

ESTTA Tracking number: **ESTTA448230**

Filing date: **12/23/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Andoni, Inc.		
Entity	Corporation	Citizenship	Virginia
Address	5900 Fort Drive Suite 201 Centreville, VA 20121 UNITED STATES		

Attorney information	Richard C. Litman Litman Law Offices, Ltd. 8955 Center Street Manassas, VA 20110 UNITED STATES efile@4patent.com Phone:(703) 486-1000
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Registration Subject to Cancellation

Registration No	3553382	Registration date	12/30/2008
Registrant	PAISANOS PASTA, LLC 7029 N INGRAM STE 108 7029 N. INGRAM STE 108 FRESNO, CA 93711 UNITED STATES		

Goods/Services Subject to Cancellation


Class 043. First Use: 2008/03/22 First Use In Commerce: 2008/03/24
All goods and services in the class are cancelled, namely: Restaurant services, including sit-down service of food and take-out restaurant services

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Design Mark	
Goods/Services	sit-down service of food, take-out service of food

Attachments	mark-32395-02.jpg cancellation-32395-02.pdf (5 pages)(100055 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Walter E. Kubitz/
Name	Walter E. Kubitz
Date	12/23/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of U.S. Trademark Registration No. 3,553,382

for the mark: PAISANOS PASTA (& design)

Registration Date December 30, 2008

Registration Owner: PAISANOS PASTA, LLC

ANDONI, INC. .)

Petitioner)

V.)

Cancellation No. _____

PAISANOS PASTA, LLC

Registrant)

PETITION FOR CANCELLATION

ANDONI, INC., a corporation organized and existing under the laws of the Commonwealth of Virginia, believes that it will be damaged by the continued registration of the above noted U.S. Trademark Registration No. 3,553,382, and hereby petitions to cancel said registration pursuant to 15 U.S. Code Section 1064. As grounds of cancellation, it is alleged as follows:

1a. ANDONI, INC. ("Petitioner") is the sole owner of a certain trademark or trademarks consisting of or including the designation "PAISANO'S" and used by Petitioner, and/or under the direct supervision and control of Petitioner.

1b. Beginning prior to the March 22, 2008 "first use" date claimed in the above noted U.S. Trademark Registration No. 3,553,382 and continuing thereafter without interruption or abandonment, Petitioner has used, and/or supervised and controlled the use of, the aforesaid Petitioner's Mark, in interstate commerce and/or other commerce which may lawfully be regulated by Congress.

1c. Beginning at least as early as April 30, 1998 and continuing thereafter without interruption or abandonment, Petitioner has used, and/or supervised and controlled the use of, the aforesaid Petitioner's Mark, in interstate commerce and/or other commerce which may lawfully be regulated by Congress.

1d. As a result of all such use of Petitioner's Mark as above alleged, the said Petitioner's Mark has become distinctive of the goods/services of Petitioner.

1e. As a result of all such use of Petitioner's Mark as above alleged, the said Petitioner's Mark has developed substantial valuable goodwill and commercial reputation, all of which goodwill and commercial reputation inures to the benefit of Petitioner.

2a. Upon information and belief, PAISANOS PASTA, LLC ("Registrant") is a limited liability company organized and existing under the laws of the State of California.

2b. Registrant has registered the above noted U.S. Trademark Registration No. 3,553,382 for the mark "PAISANOS PASTA (& design)" for restaurant services, including sit-down service of food and take-out restaurant services (hereinafter "Registrant's Mark").

3a. Registrant's Mark is substantially similar to Petitioner's Mark in sight, sound, and commercial impression.

3b. Registrant's Mark is registered for goods/services which are closely related to the goods/services with which Petitioner uses the said Petitioner's Mark in interstate commerce and/or other commerce which may lawfully be regulated by Congress

3c. Registrant's Mark is confusingly similar to Petitioner's Mark and for goods and/or services related thereto.

4a. Petitioner's date of first use in commerce of its said Petitioner's Mark predates Registrant's date of first use of its said Registrant's Mark.

4b. Petitioner has priority in time and right as to its said Petitioner Mark, specifically, priority over Registrant as to Registrant's claim as to the said Registrant's Mark.

5a. If Registrant is permitted to have and maintain the said Registrant's Mark, any defect, objection or fault found with Registrant's goods/services could potentially reflect upon and seriously injure the goodwill and commercial reputation which Petitioner has established for Petitioner's goods/services.

5b. If Registrant is permitted to have and maintain the said Registrant's Mark, confusion, mistake, and deception in trade resulting in damage and injury to Petitioner likely would be caused.

5c. If Registrant is permitted to have and maintain the said Registrant's Mark, such Registrant's Mark likely would be cited as a bar to Petitioner's registration of Petitioner's Mark.

5d. If Registrant is permitted to have and maintain the said Registrant's Mark, such registration will have a diluting effect on Petitioner's rights in the said Petitioner's Mark. The use by Registrant of the said Registrant's Mark may eventually deprive the said Petitioner's Mark of all distinctiveness, since such use and registration will blur the ability of the said Petitioner's Mark to serve as an identification of source.

5e. If Registrant is permitted to have and maintain the said Registrant's Mark, Registrant would thereby have and maintain at least a prima facie exclusive right to the use of the said Registrant's Mark. Such registration would continue to be a source of damage and injury to Petitioner.

6. Petitioner reserves the right to, and intends to, rely upon any and all further grounds for cancellation properly provable under the facts herein as or after such grounds become known to Petitioner, whether or not specifically pleaded above, including but not limited to the grounds of abandonment, fraud, mistake, prior judgment, and any other matter which is or may become the basis of issue herein.

WHEREFORE, Petitioner requests that this present petition be granted, that the aforesaid U.S. Trademark Registration No. 3,553,382 be cancelled, and that the Trademark Trial and Appeal Board grant such other and further relief as may be deemed appropriate.

CONTINUED FROM PREVIOUS PAGE

Respectfully submitted,

ANDONI, INC.
(a Virginia corporation)
Petitioner

Date: December 23, 2011.

By: Walter Kubitz
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Manassas, Virginia 20110
e-mail: efile@4patent.com
Phone: (703) 486-1000
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December 2011 a true and accurate copy of this present Petition for Cancellation was sent by first class mail, postage prepaid, correctly and legibly addressed to Registrant Paisanos Pasta, LLC at the address 7029 N Ingram Suite 108, Fresno, CA 93711, which is the current address of record for Registrant.

Walter Kubitz
Walter Kubitz, Esq.